APPEAL NO. 93472

At a contested case hearing held in (city), Texas, on April 27, 1993, the hearing officer, (hearing officer), determined that on (date of injury), the appellant (claimant) sustained a compensable injury to her left wrist, left hand, left knee, right shoulder, neck and back in the course and scope of her employment when she slipped and fell on wet grass while leaving her employer's premises. However, the hearing officer further concluded that claimant's compensable injury had not resulted in any disability as such is defined in the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.03(16) (Vernon Supp. 1993) (1989 Act). In her untimely appeal, claimant asserted a variety of complaints concerning her representation by an attorney, medical correspondence and other evidentiary matters, employer's personnel file, social security disability benefits, and so forth. The response of the responde nt (carrier) addressed each of claimant's concerns insofar as the carrier was able to do so with the information it had available.

DECISION

Finding that claimant's request for review was not timely filed, our jurisdiction is not invoked and the decision of the hearing officer is affirmed by operation of law.

Our reasoning in this case is the same as was discussed in Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992. The Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.41(a) (Vernon Supp. 1993) (1989 Act) provides, in part, that a party desiring to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date the hearing officer's decision is received from the Texas Workers' Compensation Commission's (Commission) hearings division. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) provides that a request for review be filed with the Commission's central office in Austin not later than the 15th day after receipt of the hearing officer's decision. Rule 143.3((c) provides that a request shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and is received by the Commission not later than the 20th day after such date. The hearing officer's decision in this case was signed on May 7, 1993, and was distributed by the Commission's hearings division on May 11, 1993. Claimant does not indicate the date she received the decision and thus we apply Rule 102.5(h) which provides, in part, that "the commission shall deem the received date to be five days after date mailed." Accordingly, claimant is deemed to have received the decision on May 16, 1993, and her appeal was required to be filed with the Appeals Panel not later than 15 days later, that is, on May 31, 1993. Claimant's request for review bore the postmark June 4, 1993, and was received by the Commission on June 11, 1993. The hearing officer advised the parties at the close of the hearing that appeals must be filed with the Appeals Panel no later than the 15th day from the date the hearing officer's decision was received by the parties. Since claimant's request for review was not mailed until June 4th, her appeal was not timely and, consequently, the jurisdiction of the Appeals Panel was not properly invoked. Pursuant to Article 8308-6.34(h) and Rule 142.16(d), the decision of the hearing officer has become

final.

The parties agreed that claimant sustained an injury to her left wrist when she fell on (date of injury). However, claimant's position was that she also injured her left hand, left knee, shoulder, neck, and back when she fell, that her fall also caused her to suffer a stroke, and that her disability resulted from the injuries she sustained in the fall. The carrier maintained that claimant's only injury was a minor one to her left wrist which did not cause her to lose time from work and which did not result in disability as defined in the 1989 Act.

Although not necessary to our decision, we have reviewed the evidence introduced at the hearing and are satisfied it sufficiently supports the hearing officer's findings and conclusions. In her well written and reasoned Decision and Order, the hearing officer succinctly set forth the evidence. Neither party complains of that statement of the evidence and it is set forth below.

STATEMENT OF THE EVIDENCE

The parties agree that the claimant sustained a work-related injury to her left wrist on (date of injury), when she slipped and fell on wet grass on her employer's premises.

The claimant testified that she also hurt her left hand, left knee, right shoulder, neck and back. She returned to work the next day, and continued working without interruption. But, she testified, the pain in her left hand did not abate, and she experienced difficulty seeing and reading, and with comprehension and memory. She sought medical treatment from Drs. M and L, and continued to work until 11 February 1991, when MC, her supervisor, offered to transfer her from the circuit board preparation unit to a job in housekeeping. When she refused, he told her to go home and not return without a doctor's release.

She testified that she has not worked since 11 February 1991, and is currently receiving social security disability payments. She stated that she believed the fall had additionally caused her to suffer a stroke, based on an MRI brain scan performed on 27 February 1991. [CL-1a].

The claimant had brittle diabetes controlled with insulin for over 15 years. She suffered from proliferative diabetic retinopathy, and had undergone laser surgery. The main symptom was light sensitivity. [CL-2a]. She testified on cross-examination that, since December, 1990, she and her doctors had been requesting her employer to change her job duties because of light sensitivity. [CL-2b; CL-1b].

The carrier argued that the claimant's inability to work was and is due to a 15 year history of diabetes. She had diabetic retinopathy in both eyes, which severely impaired her vision and rendered her unable to tolerate bright light. Her physical pain was caused not by the injury, but by severe diabetic neuropathy. The 2/27/91 MRI showed not the results of a stroke, but "lacunar infarcts," related to the diabetes. [CR-A1].

JC, Operations Manager, testified that her performance had steadily declined during 1990 because of her deteriorating vision. LS, Employee Relations Manager, testified that he had worked for two months, at her request, and because of increasing complaints about her performance. Mike Collins testified that he had placed the claimant on sick leave on 18 February 1991. On 19 February 1992 she was notified that the employer had terminated her.

A review of the voluminous medical evidence submitted by both parties reveals that:

The claimant saw the company doctor, BM, on 6 February 1991, and told him she had fallen and hurt her left hand, left knee, left shoulder, and upper back. [CL-1c]. On 7 February 1991 she saw JL., who diagnosed cervical strain, lumbar strain, and left wrist contusion, and recommended conservative treatment. [CL-1d].

On 20 February 1991 she saw orthopedic surgeon, RB., for "multiple, multiple complaints," including "shoulder and hand pain." Noting markedly decreased discriminatory sensation in both hands, he diagnosed "severe diabetic neuropathy." [CR-A2].

On 22 February 1992 she first saw neurologist LM. He interpreted the claimant's EMG results to be consistent with diabetic polyneuropathy. [CR-A3]. On 8 March 1991, M, after examining the claimant for pain in her feet, shoulders and arms, stated "I believe the patient's pain is from her diabetic neuropathy." [CR-A1]. In the same report, he interpreted the MRI as revealing lacunar infarcts, related to her history of diabetes. On 19 July 1991, M summarized the claimant's condition as follows:

> Ms. J has diabetes with severe neurological manifestations, including peripheral neuropathy. She has trouble with her memory. Her neuropathy is painful. She had a severe vision problem. I don't think it is possible that she could hold down a job, and I don't expect that she will improve. I would recommend that she file for permanent disability. [CR-A4].

Having reviewed the record, had our jurisdiction been properly invoked, we would be of the opinion that the hearing officer's decision was not so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. *See* Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision of the hearing officer has become final by operation of law.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge